

PRESIDING OFFICER'S
RULING NO. N2012-1/54

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Mail Processing Network
Rationalization Service Changes, 2012

Docket No. N2012-1

PRESIDING OFFICER'S RULING GRANTING
AMERICAN POSTAL WORKERS UNION, AFL-CIO MOTION TO COMPEL
RESPONSES TO APWU/USPS-21-22

(Issued May 9, 2012)

On April 20, 2012, the American Postal Workers Union, AFL-CIO, filed a motion to compel a response to interrogatory APWU/USPS-21(a) and more responsive answers to interrogatories APWU/USPS-21(b) and 22.¹ The interrogatories seek information related to Express Mail and Priority Mail. The interrogatories were filed on March 29, 2012.² The Postal Service filed responses to interrogatories APWU/USPS-21(b) and 22, and an objection to APWU/USPS-21(a) on April 12, 2012.³ The Postal

¹ American Postal Workers Union, AFL-CIO, Motion to Compel Responses to APWU Interrogatories APWU/USPS-21-22, April 20, 2012 (Motion).

² Interrogatories of the American Postal Workers Union, AFL-CIO to United States Postal Service (APWU/USPS-21-22), March 29, 2012.

³ Responses of the United States Postal Service to American Postal Workers Union Interrogatories (APWU/USPS-21 and 22), April 12, 2012. Objection of the United States Postal Service to APWU/USPS-21(a), April 12, 2012 (Objection). The Objection was accompanied by United States Postal Service Motion for Late Acceptance of Objection to Interrogatory APWU/USPS-21(a), April 12, 2012. The motion for late acceptance is granted.

Service filed an answer in opposition to the Motion on April 27, 2012.⁴ The Motion is granted.

Interrogatory APWU/USPS-21(a). APWU seeks a response to interrogatory APWU/USPS-21(a).

APWU/USPS-21. In response to APWU/USPS-T1-34 Mr. Williams stated that “the Postal Service is currently evaluating new service areas and assessing any potential changes required for Express Mail and Priority Mail service standards.”

a) Please provide the current performance data for Priority Mail and Express Mail.

The Postal Service objects to interrogatory APWU/USPS-21(a) as irrelevant because “the current performance data for Express Mail and Priority Mail have no bearing on the issues raised in this proceeding which pertain to market dominant service standards and plant consolidations.” Objection at 1. The Postal Service further contends that Express Mail and Priority Mail service performance data is commercially sensitive, proprietary and restricted. *Id.* Finally, the Postal Service states that the question has been asked and answered, citing its response to interrogatory APWU/USPS-T1-34(a) and (b). *Id.*

APWU contends the information sought by interrogatory APWU/USPS-21 is necessary to assess the overall impact of the Postal Service’s proposals on cost and revenue. Motion at 3. APWU maintains that both market dominant and competitive products contribute to the financial condition of the Postal Service and that the consolidation initiative will undoubtedly affect competitive products in some way. *Id.* at 2. APWU argues that the Postal Service’s claim that the information is commercially sensitive is unpersuasive because the response may be filed under seal. *Id.* at 3-4. Finally, APWU contends that interrogatory APWU/USPS-T1-34(a) and (b) cited by the

⁴ Opposition of the United States Postal Service to American Postal Workers Union, AFL-CIO, Motion to Compel Responses to APWU Interrogatories APWU/USPS-21-22, April 27, 2012 (Answer).

Postal Service did not ask the same question asked in interrogatory APWU/USPS-21(a), nor did the response include service standard or service performance information. *Id.* at 4-6.

In its Answer, the Postal Service reiterates its original objections and maintains that the Postal Service is not required to report Express Mail or Priority Mail service performance. Answer at 2. The Postal Service contends that even if current performance data were reported, the data would not be informative as to future service performance. *Id.* at 2-3.

The Postal Service disagrees with APWU's assertion that responses to this interrogatory can be filed under seal, as were other library references in this docket. The Postal Service contends the previously filed material is different because it did not contain performance data for competitive products. It states those library references largely contained commercially sensitive information concerning First-Class Mail and postal facilities. *Id.* at 3-4.

The Postal Service argues to the extent the interrogatory seeks information of future Express Mail and Priority Mail service performance, the response to interrogatory APWU/USPS-T1-34(a) and (b) provides the best response available. The Postal Service reiterates that (1) the Postal Service is still evaluating new service areas and assessing potential changes to service standards, and (2) even when the evaluation is completed, the Postal Service will be unable to predict the percentage of mail delivered within the applicable future service standard. *Id.* at 4.

The Postal Service's objections are unpersuasive. Express Mail and Priority Mail service performance may be relevant in this docket. For example, if it were shown that network realignment had a detrimental effect on either or both products, this could have a negative effect on the overall financial condition of the Postal Service and make network realignment less attractive. The Postal Service has not demonstrated a plausible reason why, if Express Mail and Priority Mail service performance data are available, it could not be filed under seal. The Postal Service argument that this type of data previously has not been filed in this docket is perplexing at best. The response to

interrogatory APWU/USPS-T1-34(a) and (b) does not, as asserted by the Postal Service, provide an answer to interrogatory APWU/USPS-21(a). The response asserts that it is not required to report Express Mail or Priority Mail service performance. Although there is no statutory requirement to report this data, if the data are available and relevant, it is discoverable. The response also states that the Postal Service cannot predict the percentage of mail that will in the future be delivered within its service standard. Interrogatory APWU/USPS-21(a) does not seek this information.

If the Postal Service has current (interpreted as within the past 2 years) service performance data for Priority Mail and Express Mail, it shall provide the data, at first under seal if necessary, as it has stated in its response.

Interrogatory APWU/USPS-21(b). APWU seeks a more responsive answer to interrogatory APWU/USPS-21(b).

APWU/USPS-21. In response to APWU/USPS-T1-34, Mr. Williams stated that “the Postal Service is currently evaluating new service areas and assessing any potential changes required for Express Mail and Priority Mail service standards.”

* * *

b) Once the evaluation referenced in Mr. Williams’ response is complete, please provide the list of changed 3-digit ZIP Code pairs for Priority Mail and Express Mail.

The Postal Service response to interrogatory APWU/USPS-21(b) states:

b) The evaluation referenced in Mr. Williams’ response is still ongoing, and is contingent upon the final determination and implementation of the network changes. The Postal Service will provide the list of 3-digit ZIP Code pairs for Priority Mail and Express Mail once the evaluation is complete.

APWU argues that the response to interrogatory APWU/USPS-21(b) does not address why an answer must wait until after implementation of the network changes when responses to earlier interrogatories indicate that an answer depends upon completion of the already completed AMP studies. APWU further asserts it is illogical

for the Postal Service to implement changes without assessing the full impact of those changes. Motion at 6.

The Postal Service states that once the AMP studies are complete, the Postal Service will begin evaluating new service areas and assessing potential service standard changes. The Postal Service also states that such evaluations will depend on the final network changes. Answer at 5.

The Postal Service notes that it has considered the impact that the initiative will have on Priority Mail and Express Mail revenue, cost, and volume. *Id.* at 6; see USPS-T-12 at 22 and library reference USPS-LR-N2012-1/NP1. The Postal Service states it will provide 3-digit ZIP Code pairs for Priority Mail and Express Mail once the evaluations are complete, but the Postal Service still will be unable to predict to percentage of Priority Mail that will be delivered within its service standard. *Id.* at 3.

The Postal Service shall provide the list of changed 3-digit ZIP Code pairs for Priority Mail and Express Mail once the information becomes available.

Interrogatory APWU/USPS-22. APWU seeks a more responsive answer to interrogatory APWU/USPS-22.

APWU/USPS-22. Does the Postal Service measure the volume of “turnaround” Priority Mail?

- a) What is the current percentage of Priority Mail that currently receives overnight delivery?
- b) What percentage of Priority Mail that currently receives overnight delivery will shift to 2-day delivery in the new rationalized network?

The Postal Service response to interrogatory APWU/USPS-22 states:

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- a) Currently, 1.1% of origin-destination 3-digit ZIP Code pairs have an overnight Priority Mail service standard. Further, see the response to APWU/USPS-T1-34. The Postal Service is not required to report Express Mail or Priority Mail performance.

b) See the response to APWU/USPS-T1-34. Even when the Postal Service completes realignment of ZIP Code pair service standards as referenced in response to APWU/USPS-21(b), the Postal Service will still be unable to predict the percentage of Priority Mail that will be delivered within its applicable service standard in the future.

APWU argues that the response to interrogatory APWU/USPS-22(a) does not address the question which asks for the percentage of Priority Mail that currently receives overnight delivery. For similar reasons, APWU contends the response to interrogatory APWU/USPS-22(b) also does not address the question. Motion at 7-8.

The Postal Service contends that if APWU seeks current service performance data and not the current percentages receiving overnight delivery, its arguments for opposing any response to interrogatory APWU/USPS-21(a) apply. Otherwise, the Postal Service asserts it provided the best available response, stating that it cannot predict such changes. *Id.* at 6.

The Postal Service's response to interrogatory APWU/USPS-22(a) provides an indication that only 1.1 percent of origin-destination 3-digit ZIP Code pairs have an overnight Priority Mail service standard. This answer is unresponsive. In answering the interrogatory, the Postal Service may interpret the interrogatory as asking for the percentage of total Priority Mail volume (for the most recent year in which data is available) that traveled between the 1.1 percent of origin-destination 3-digit ZIP Code pairs having an overnight service standard. It need not answer what percentage of mail between these origin-destination 3-digit ZIP Code pairs actually met this service standard. The Postal Service's objections based on the same grounds as with interrogatory APWU/USPS-21(a) are also unpersuasive here.

The Postal Service's response to interrogatory APWU/USPS-22(b) also is unresponsive. The Postal Service is not being asked to predict the percentage of Priority Mail that will be delivered within its applicable service standard in the future. The simple answer may be that the Postal Service has not determined the future origin-destination 3-digit ZIP Code pairs that will have either overnight or 2-day service

standards. However, once this information becomes available, the Postal Service should be able to project the percentage of total Priority Mail volume moving from an overnight to a 2-day service standard (based upon the most recent year in which data is available suggested for interrogatory APWU/USPS-22(b)). When the information becomes available, the Postal Service shall provide this information.

Miscellaneous requests. APWU also requests the Commission to direct the Postal Service to update other discovery requests based upon compelled responses to interrogatories APWU/USPS-21(b) and 22. APWU further requests that it be allowed to update its testimony once responses are filed. *Id.* at 8. APWU also suggest steps to expedite the resolution of this issue. *Id.* at 9.

The Postal Service is expected to abide by the rules requiring updates to previously filed responses to discovery requests where necessary. The schedule already provides for updating intervenor testimony based on supplemental Postal Service testimony. Where appropriate, updates to intervenor testimony can also be based upon recently filed, late responses to discovery requests.

RULING

American Postal Workers Union, AFL-CIO, Motion to Compel Responses to APWU Interrogatories APWU/USPS-21-22, filed April 20, 2012, is granted consistent with the body of this Ruling. Responses to the extent possible shall be filed by May 16, 2012. Otherwise, responses shall be filed when the information becomes available.

Ruth Y. Goldway
Presiding Officer